

## **Remarks**

The various parts of the Office Action (and other matters, if any) are discussed below under appropriate headings.

### ***Allowable Subject Matter***

The indicated allowability of claims 5-10, 12-15 and 19 is noted with appreciation. By way of the foregoing amendments, claims 5, 12, 15 and 19 have been rewritten in independent form. Presumably at least claims 5-10, 12-15 and 19 are now in proper form for allowance.

Regarding new claims 23-25, claim 23 is the same as original claim 1 in combination with the features of original claim 5, claim 24 is the same as original claim 11 in combination with the features of original claim 19, and claim 25 is patterned after claim 23 but more generally drawn to a toy. It is suspected the Examiner will find claims 23-25 allowable in view of the indicated allowability of claims 5 and 19, respectively.

### ***Drawings***

The Examiner has objected to the drawings for failing to show a xylophone as set forth in claim 20. Withdrawal of the objection is respectfully requested.

The drawing already depicts an instrument body, albeit in the form of an animal having a drumhead (or conversely, an drum having the body thereof in the form of a animal). A xylophone, like a drum, is a well known percussion instrument. Given the conventional nature of a xylophone, it is respectfully submitted that a detailed illustration thereof is not needed for a proper understanding of the invention as set forth in claim 20 (see 37 CFR 1.83).

### ***Claim Rejections - 35 USC § 112***

The Examiner considers certain language of claims 2 and 3 to be indefinite. In particular, the Examiner asks "how can the striker attachment location be spaced inwardly from both ends of the striker by at least one fifth at the same time?"

Perhaps the question posed by the Examiner is best answered by a specific example, such as that shown in the drawing. In the drawing each tether is attached to the respective striker about midway between the ends of the striker. Consequently, the

attachment location is spaced from both ends by at least one fifth the length of the striker. As illustrated, the attachment location can be spaced from each end of the striker by more than one fifth the length of the striker.

Withdrawal of the rejection under 35 USC 112 is respectfully requested.

### ***Claim Rejections - 35 USC § 102***

Claims 1 and 21 have been rejected as being anticipated by Eubanks U.S. Patent No. 6,328,626 (herein Eubanks). According to the Examiner, the tether of Eubanks has one end connected to the striker at a location spaced inwardly from the ends of the striker.

Even though Eubanks does not disclose a toy percussion instrument or a toy, claims 1 and 21 have both been amended to specify that the striker/implement attachment location is spaced inwardly from the ends of the striker/implement by at least one fifth the length of the striker/implement. Accordingly, the rejection based on Eubanks is now moot, given that the attachment location of the tether to the striker is spaced from an end of the striker less than one fifth the length of the striker. For at least this reason, withdrawal of the rejection under 35 USC 102 is respectfully requested.

### ***Claim Rejections - 35 USC § 103***

Claims 1-4, 11, 18 and 21-22 have been rejected as being unpatentable over Epple Jr. U.S. Patent No. 6,443,803 (herein Epple) taken alone or in view of Eubanks and/or Luchenbach U.S. Patent No. 546,021 (herein Luchenbach). Withdrawal of this rejection is respectfully requested for at least the following reasons.

In support of the rejection the Examiner points out that Epple discloses the use of a tether at column 4, lines 20 and 21. These lines are contained in the following excerpt:

The striker weight assembly comprises a cylindrical block through which a hole is bored on the central axis. The hole is fitted with flexible ring elements to frictionally secure the striker weight assembly to the striker rod element. The striker weight can then be moved up or down on the striker peg to obtain varying sounds. The striker weight element

may have a groove on its circumference for attaching a string tether.

Epple, column 4, lines 14-21. While Epple discloses a groove for a string tether, no mention is made as to the use of the tether. Given that the tether is more particularly described in relation to the striker element assembly 34 at column 6, lines 37-44, any inference to be drawn is that the tether is employed to hold the striker weight element 27 to the striker rod element 26. In any event, there appears to be no disclosure that the tether be attached to the sound box housing assembly 33.

Recognizing this deficiency of Epple as a teaching reference vis-a-vis the subject matter of the claims being rejected, the Examiner contends it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a tether to attach the striker of Epple to the sound box housing assembly 33 by a tether in view of Eubanks. Even if there were motivation to combine the teachings of Eubanks with those of Epple, the result would not give rise to the claimed subject matter.

Regarding claims 1 and 21, Eubanks teaches attachment of a tether to a striker at a location near the end of the striker. Thus, for the reasons discussed above with respect to claims 1 and 21, the combination advanced by the Examiner does not suggest the subject matter of claims 1 and 21. Moreover, neither Epple nor Eubanks disclose a toy percussion instrument or a toy.

Regarding the other independent claims included in the rejection, these claims recite further structural features neither disclosed nor suggested by the applied references. Claim 11 recites a toy percussion instrument comprising, *inter alia*, a tether that has one end connected to the instrument body at a body attachment location adjacent the drumming surface, and an opposite end connected to the striker at a striker attachment location, the striker attachment location being spaced inwardly from the striker end of the striker by a distance about equal the distance between the body attachment location and a center of the drumming surface. First, neither Epple nor Eubanks disclose a toy percussion instrument. Second, the manner of attachment of the tether to the striker is neither disclosed nor suggested by Epple and Eubanks.

Claim 22 recites a toy comprising, *inter alia*, a tether that has one end connected to the implement at a main unit attachment location, and an opposite end connected to the implement at an implement attachment location, the implement attachment location being spaced inwardly from a non-handle end of the implement by a distance about equal the distance between the main unit attachment location and the center of the play area. First, neither Epple nor Eubanks disclose a toy. Second, the manner of

attachment of the tether to the implement is neither disclosed nor suggested by Epple and Eubanks.

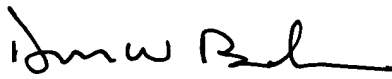
The dependent claims not specifically discussed recite still further features of the subject matter for which protection is sought.

**Conclusion**

In view of the foregoing, request is made for timely issuance of a notice of allowance.

Respectfully submitted,

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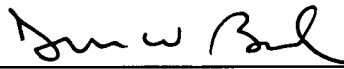
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